

## Condo Smarts January 24-27, 2018 Collections

Dear Tony: After reading your column last week about collections, our council requested a copy of our current receivables from our property manager. We were horrified when we went through the list to discover we have no back up decisions, minutes, support or knowledge of a number of debts outstanding that date back to early 2015. We have shown a number of annual budget surpluses for 2015 and 2016, but if we can't recover these debts we will have to write these debts off and our owners will be left with a deficit that we have to pay back. Not good at a time when our fees are rising faster than the rate of inflation. Our question, can we still collect an insurance deductible from 2015 for \$10,000 if the strata has done nothing about it? We scoured our minutes for 2015 and there was no indication the council took any action and this owner now has their unit listed for sale. So how do we collect this? Conrad B.

Dear Conrad: Wow! Last week's column opened the flood gates with over 500 emails from council members in a similar situation. General response is councils are not getting monthly reports showing detailed receivables and as a result have no way of enforcing bylaws and making collections decisions. A late payment of a strata fee for example, is a bylaw enforcement matter and a penalty cannot be automatically added to the account unless the strata council have followed proper bylaw enforcement procedures. A collection of an insurance deductible cannot be imposed on the issuing of a Form F Payment Certificate required when someone sells their strata lot, unless the strata corporation has a decision from the courts, the CRT or an arbitration, or has an accepted action in those jurisdictions. This would either require the seller to pay the debt, a written undertaking from their lawyer agreeing to pay the debt on conveyance, or that they pay the amount into trust to the strata corporation to dispute the amount. If your strata has done nothing to collect the \$10,000, the 2-year limitation period on collections and actions may have expired at this time and it may sadly now be unrecoverable. Before you make that decision place a call to your lawyer to determine if you have any options. If the owner has acknowledged the debt, that may continue the 2-year limitation period.

The best solution for strata councils is record all bylaw enforcement decisions in your minutes. If any fines or penalties or enforcement actions are authorized, record the details as well. Without this information, future strata councils have little information to rely upon as strata councils and managers change frequently. If the strata council voted on bylaw enforcement and collections decisions why is that information not in the minutes? Bylaw enforcement and collections are not private or confidential information. Do not include any personal information of owners, tenants or occupants, but the decisions are critical. It is the only method to track and follow up on decision making. Here is a simple yet effective example for minutes that identifies the decision, what strata lot it affected, the action of council, and any ongoing instructions for the strata manager. October 2017 minutes sample: "It was carried by majority vote of council to issue a demand notice to strata lot #27 for the amount of \$5,000 for the insurance deductible relating to the water escape claim of July 1, 2017 advising if the amount is not paid within 30 days the strata corporation will commence a CRT action to obtain an order for the amount owing. The council reviewed the cause of the claim and identified the owner was responsible for failing to replace the leaking door seal on their dishwasher and left the unit while it was running." If your strata council and manager manage action type minutes that carry over until a matter is resolved, your monthly business will be much easier to handle and you will avoid needless losses and disasters.

Sincerely,

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